

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIKSSON, LLC, *a California Limited
Liability Company*,

Plaintiff,

v.
LOVELAND PRODUCTS, INC., *a
Colorado Corporation*; and DOES 1 to 20,
inclusive,

Defendants.

No. 1:20-cv-00703-DAD-SKO

ORDER GRANTING PLAINTIFF'S MOTION
TO REMAND AND REMANDING CASE TO
FRESNO COUNTY SUPERIOR COURT

(Doc. No. 8)

INTRODUCTION

This matter is before the court on the motion to remand filed by plaintiff Eriksson, LLC (“Eriksson”). (Doc. No. 8.) Pursuant to General Order No. 617 addressing the public health emergency posed by the coronavirus outbreak, the court took the matter under submission to be decided on the papers. (Doc. No. 9.) For the reasons discussed below, the court will grant the motion and remand this case to Fresno County Superior Court.

BACKGROUND

Plaintiff Eriksson is a California limited liability company that farms pistachios in Fresno County. (Doc. No. 8-1 at 2.) Defendant Loveland Products, Inc. (“Loveland”) is a Colorado corporation that sells agricultural products and services. (Doc. No. 13 at 1–2, 3.) On February

1 28, 2020, Eriksson filed this action against Loveland in Fresno County Superior Court, alleging
2 product liability claims exclusively under state law. (Doc. No. 2-1 at 7–16.) The claims relate to
3 plaintiff’s usage of defendant’s allegedly defective insecticide, which purportedly resulted in the
4 chemical contamination of plaintiff’s pistachio crop. (*Id.* at 1, 3–6.)

5 After defendant was served with the complaint on March 4, 2020, it removed the case to
6 this federal court on March 31, 2020. *See Eriksson, LLC v. Loveland Products, Inc.*, No. 1:20-cv-
7 00464-AWI-SAB (E.D. Cal. Apr. 3, 2020) (Doc. No. 3). Three days later, on April 3, 2020,
8 Senior District Judge Anthony W. Ishii remanded the case to state court for lack of subject-matter
9 jurisdiction, concluding that defendant failed to demonstrate that complete diversity existed. *Id.*
10 (Doc. No. 7.) As Judge Ishii pointed out, because plaintiff is a limited liability company, it “is a
11 citizen of every state of which its owners/members are citizen.” *Id.* (quoting *3123 SMB, LLC v.*
12 *Horn*, 880 F.3d 461, 465 (9th Cir. 2018)). Thus, defendant’s allegations regarding plaintiff’s
13 principal place of business and state of incorporation did not conclusively resolve the issue of
14 whether complete diversity existed. *Id.*

15 More than six weeks later, on May 20, 2020, defendant removed this case to this federal
16 court for a second time. (Doc. No. 2.) This time, defendant included in its removal notice the
17 allegation that Eriksson is a limited liability company whose sole member is Brattalid, Inc.
18 (“Brattalid”), which is incorporated in Delaware with its principal place of business in California.
19 (Doc. No. 2 at 3.) Because Eriksson is thus a citizen of Delaware and California, *see 3123 SMB*,
20 880 F.3d at 465, and Loveland is a citizen of Colorado, defendant contends that complete
21 diversity exists here under 28 U.S.C. § 1332. In response, on June 2, 2020, plaintiff moved to
22 remand this case to Fresno County Superior Court. (Doc. No. 8.) On May 30, 2020, defendant
23 filed its opposition to the motion to remand, and on July 14, 2020, plaintiff filed its reply thereto.
24 (Doc. Nos. 13, 15.)

25 **LEGAL STANDARD**

26 A defendant in state court may remove a civil action to federal court so long as that case
27 could have been filed in federal court. 28 U.S.C. § 1441(a); *see City of Chicago v. Int’l Coll. of*
28 *Surgeons*, 522 U.S. 156, 163 (1997). Thus, removal of a state action may be based on either

1 diversity jurisdiction or federal question jurisdiction. *See City of Chicago*, 522 U.S. at 163;
2 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Diversity jurisdiction exists in actions
3 between citizens of different States where the amount in controversy exceeds \$75,000 exclusive
4 of interests and costs. 28 U.S.C. § 1332. Diversity of citizenship must be complete, and the
5 presence “of a single plaintiff from the same State as a single defendant deprives the district court
6 of original diversity jurisdiction over the entire action.” *Abrego v. The Dow Chem. Co.*, 443 F.3d
7 676, 679 (9th Cir. 2006) (citing *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546
8 (2005)).

9 “The removal statute is strictly construed against removal jurisdiction, and the burden of
10 establishing federal jurisdiction falls to the party invoking the statute.” *California ex rel. Lockyer*
11 *v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004). If there is *any* doubt as to the right of
12 removal, a federal court must reject jurisdiction and remand the case to state court. *See*
13 *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010); 28 U.S.C.
14 § 1447(c); *see also Bruns v. NCUA*, 122 F.3d 1251, 1257 (9th Cir. 1997) (holding that remand for
15 lack of subject matter jurisdiction “is mandatory, not discretionary”).

LEGAL ANALYSIS

17 Here, plaintiff argues that this action must be remanded to Fresno County Superior Court
18 for either of two reasons: 1) successive removals are generally barred; and 2) defendant's
19 removal of this action is untimely. (Doc. No. 8-1 at 4–9.) Because the court finds that
20 defendant's successive removal is barred, it need not reach plaintiff's argument challenging the
21 timeliness of the second removal.

A. Defendants' Successive Removal is Barred

23 “A successive removal petition is permitted only upon a ‘relevant change of
24 circumstances’—that is, ‘when subsequent pleadings or events reveal a *new* and *different* ground
25 for removal.’” *Reyes v. Dollar Tree Stores, Inc.*, 781 F.3d 1185, 1188 (9th Cir. 2015) (quoting
26 *Kirkbride v. Cont'l Cas. Co.*, 933 F.2d 729, 732 (9th Cir. 1991)); *see also Seedman v. U.S. Dist.*
27 *Court for Cent. Dist. of Cal.*, 837 F.2d 413, 414 (9th Cir. 1988) (“[A] second removal petition
28 based on the same grounds does not ‘reinvest’ the court’s jurisdiction.”). This bar to successive

removals is applied strictly. *See Leon v. Gordon Trucking, Inc.*, 76 F. Supp. 3d 1055, 1061–62 (C.D. Cal. 2014); *see also Kircher v. Putnam Funds Trust*, 547 U.S. 633, 640 (2006) (“[W]e have relentlessly repeated that ‘any remand order issued on the grounds specified in § 1447(c) [is immunized from all forms of appellate review], whether or not that order might be deemed erroneous by an appellate court.’”’) (alterations in original). This is because “state court proceedings are to be interfered with once, at most. This is not only in the interest of judicial economy, but out of respect for the state court and in recognition of principles of comity. The action must not ricochet back and forth depending upon the most recent determination of a federal court.” *Leon*, 76 F. Supp. 3d at 1062 (quoting *In re La Providencia Dev. Corp.*, 406 F.2d 251, 252 (1st Cir. 1969)); *see also Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005) (reaffirming “the canon that instructs that removal statutes should be construed narrowly in favor of remand to protect the jurisdiction of state courts”).

In order to avoid this bar to successive removal, the removing party must show that a new and different ground exists for the removal, such as “[a]n intervening change in the law that ‘gives rise to a new basis for subject-matter jurisdiction,’” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 789 (9th Cir. 2018) (quoting *Reyes*, 781 F.3d at 1188), or the discovery of new facts not available at the time of the first removal, *see Leon*, 76 F. Supp. 3d at 1062–63 (collecting cases).

Here, defendant Loveland asserts that “[r]emoving based on the same legal ground but newly discovered facts is appropriate.” (Doc. No. 13 at 7.) Although Loveland concedes that its first removal of this case was improper because “Eriksson’s citizenship was not apparent from the face of the complaint,” defendant argues that it could not “have determined Eriksson’s citizenship based on [] public records.” (*Id.* at 8.) And though it also concedes that Eriksson’s public filings identify Brattalid as its member-manager, defendant contends that the filings “do not identify Brattalid as Eriksson’s *sole* member” and “do not require that Brattalid provide its principal place of business—just an address.” (*Id.*) The court is unpersuaded by these arguments.

First, as a factual matter, public filings with the California Secretary of State clearly indicate that Eriksson is a member-managed LLC, (Doc. No. 8-2, Ex. A), and that its sole

1 member¹ is Brattalid, a corporation with an office in California, (Doc. No. 8-2, Exs. B, C). A
2 public filing with the Delaware Department of State’s Division of Corporations also reveals that
3 Brattalid is incorporated in Delaware. (Doc. No. 8-2, Ex. D.) Defendant, however, raises the
4 possibility that the address listed for Brattalid may not have necessarily represented its principal
5 place of business. (Doc. No. 13 at 8.) Indeed, this court has previously distinguished between the
6 “principal office” that a corporation must declare to the California Secretary of State, *see*
7 California Corporations Code § 2117(3)–(5), and the “principal place of business” used to
8 determine a corporation’s citizenship, *Hertz Corp. v. Friend*, 559 U.S. 77, 91–93 (2010). *See*
9 *Mesa v. Am. Gen. Life Ins. Co.*, No. 1:19-cv-01393-DAD-EPG, 2020 WL 374354, at *3 (E.D.
10 Cal. Jan. 23, 2020). But that distinction does not save this case from remand because defendant
11 had no reason to believe that Brattalid maintained a principal place of business in Colorado,
12 where defendant is a citizen. If defendant Loveland did, then it disregarded the possibility that
13 complete diversity did not exist. Regardless, defendant “had a responsibility to [remove this
14 case] properly, and not prematurely on the basis of insufficient information.” *Gordon v. Republic
15 Servs. Inc.*, No. 2:13-cv-00134-GAF-FFM, 2013 WL 571814, at *1 (C.D. Cal. Feb. 8, 2013).

16 This segues into the primary reason why defendant’s successive removal is barred: the
17 fact that defendant removed the first time *even though* it admits that it could not have
18 conclusively determined Eriksson’s citizenship from the face of the complaint. (*See* Doc. No. 13
19 at 7–8.) Because “notice of removability under § 1446(b) is determined through examination of
20 the four corners of the applicable pleadings, not through subjective knowledge or a duty to make
21 further inquiry,” and because “no ground for removal [was] *evident*” from the face of plaintiff’s
22 complaint, “the case [was] ‘not removable’” the first time around. *Harris*, 425 F.3d at 694
23 (emphasis added). There was therefore no need for defendant to rush to remove because the
24 thirty-day clock on removal under § 1446(b) does not commence to run until “receipt by the
25 defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may

26
27 ¹ Moreover, as plaintiff correctly points out, the forms from the California Secretary of State
28 require an LLC to provide the name and address of each member/manager. (*See* Doc. No. 8-2,
Ex. B.)

1 first be ascertained that the case is one which is or has become removable.” 28 U.S.C. §
2 1446(b)(3); *see also Harris*, 425 F.3d at 694. In any event, defendant prematurely removed this
3 action in the first instance, and not only did it fail to plead what public information *was* available
4 to it, it neglected to resolve the issue of Brattalid’s—and therefore Eriksson’s—citizenship. *See*
5 *Eriksson, LLC v. Loveland Products, Inc.*, No. 1:20-cv-00464-AWI-SAB (E.D. Cal. Apr. 3, 2020)
6 (Doc. No. 3).

7 The court also notes that since 2006, it has been clear in the Ninth Circuit that “an LLC is
8 a citizen of every state of which its owners/members are citizens.” *Johnson v. Columbia Props.*
9 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006); *see also 3123 SMB*, 880 F.3d at 465; *NewGen,*
10 *LLC v. Safe Cig, LLC*, 840 F.3d 606, 611 (9th Cir. 2016) (“[W]ith respect to a limited liability
11 company, the citizenship of all of the members must be pled.”). To allow defendant a second bite
12 at the removal apple by pleading ignorance and neglect would frustrate a policy that “guards
13 against premature and protective removals and minimizes the potential for a cottage industry of
14 removal litigation.” *Harris*, 425 F.3d at 698.

15 For that reason, in circumstances similar to those presented here, district courts have
16 repeatedly rejected successive removals on the same grounds where the first removal was rejected
17 due to a failure to adequately allege the citizenship of an LLC. *See, e.g., Muniz v. UtiliQuest,*
18 *LLC*, No. 2:19-cv-08759-PA-SK, 2019 WL 6827270, at *1 (C.D. Cal. Dec. 5, 2019) (rejecting
19 successive removal due to the defendant LLC’s initial failure to allege its own citizenship);
20 *Teleflora LLC v. WB Commerce LLC*, No. 2:12-cv-07176-SJO-AJW, 2015 WL 6951707, at *2–3
21 (C.D. Cal. Nov. 10, 2015) (rejecting successive removal due to the defendant’s initial failure to
22 allege the citizenships of both parties, which were LLCs).

23 Defendant relies on the decision in *Sweet v. United Parcel Serv., Inc.*, No. 1:09-cv-02653–
24 DDP-RZ, 2009 WL 1664644 (C.D. Cal. June 15, 2009). (Doc. No. 13 at 7.) There, the court
25 initially remanded the case because the defendant removed only on the basis of the complaint,
26 which alleged the plaintiff’s state of residence, not her citizenship. *See Sweet*, 2009 WL
27 1664644, at *2. After the defendant took plaintiff’s deposition and conclusively determined her
28 citizenship, it again removed the case to federal court. *Id.* When the plaintiff moved to remand,

1 the court denied the motion, concluding that the second removal notice “was based on new
2 information not previously available through this litigation.” *Id.* at *5. However, *Sweet* is
3 inapposite because it involved a *natural person* whose citizenship depended in part on subjective
4 factors such as her intention to remain in the state that she called home. *Id.*; see *Adams v. W.*
5 *Marine Prod., Inc.*, 958 F.3d 1216, 1221 (9th Cir. 2020) (holding that a natural person’s state of
6 citizenship “is determined by her state of domicile[,] . . . this is, where (i) she resides, (ii) ‘with
7 the intention to remain or to which she intends to return’” (quoting *Kanter v. Warner-Lambert*
8 *Co.*, 265 F.3d 853, 857 (9th Cir. 2001))).²

9 In summary, as defendant acknowledges, it has already improvidently removed this case
10 once. (See Doc. No. 13 at 7–8.) To allow it to remove again on identical grounds with
11 information that it could have obtained the first time around using the same methods it used here
12 to determine plaintiff’s citizenship would be an impermissible breach of the bar to successive
13 removals.

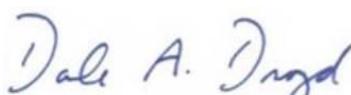
14 **CONCLUSION**

15 Accordingly:

16 1. Plaintiff Eriksson’s motion to remand (Doc. No. 8) is granted;
17 2. This action is remanded to the Fresno County Superior Court for lack of subject-
18 matter jurisdiction; and
19 3. The Clerk of the Court is directed to close this case.

20 IT IS SO ORDERED.

21 Dated: July 21, 2020


22 UNITED STATES DISTRICT JUDGE

23

24 ² Other district courts have declined to follow *Sweet*, remanding to state courts even under
25 circumstances similar to those presented in that case. See, e.g., *Gordon*, 2013 WL 571814, at *1
26 (rejecting successive removal based on post-remand deposition that established the plaintiff’s
27 citizenship); *Azarbarzin v. Convatec Inc.*, No. 2:12-cv-09800-GAF-AJW, 2013 WL 80271, at *2
28 (C.D. Cal. Jan. 7, 2013) (rejecting successive removal based on plaintiff’s post-remand stipulation
to her citizenship); *Ybarra v. Apartment Inv. & Mgmt. Co.*, No. 2:12-cv-05814-SJO-JCG, 2012
WL 4788398, at *1 (C.D. Cal. July 27, 2012) (rejecting successive removal based on plaintiff’s
post-remand admission of her citizenship).